

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM BECK,)	
)	
Plaintiff,)	Case No. 1:06-cv-5
)	
v.)	Honorable Richard Alan Enslen
)	
)	
JAN LOTZ,)	
)	
Defendant.)	
)	

ORDER GRANTING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. Plaintiff's action was dismissed by the Court on February 21, 2006. Plaintiff filed a notice of appeal on March 6, 2006. The Court issued an order of deficiency requiring Plaintiff, within thirty days, to pay the appellate filing fee or to apply for leave to proceed *in forma pauperis* on appeal by filing a motion, affidavit of indigence and prison trust account statement. On April 20, 2006, Plaintiff filed a motion to proceed *in forma pauperis*, along with the requisite affidavit of indigence and prisoner trust account statement. However, due to a clerical error, the affidavit of indigence and prisoner trust account statement were not scanned into the Court's electronic filing system. Because it did not appear that Plaintiff had complied with the Court's order of deficiency, the Court issued an Order on May 19, 2006, deny Plaintiff leave to proceed *in forma pauperis*. In light of Plaintiff's compliance with the Court's order of deficiency, the Court will vacate its previous order and grant Plaintiff leave to proceed *in forma pauperis* on appeal.

At the time Plaintiff filed his notice of appeal, the fee for appealing a civil action was \$255.00.¹ Plaintiff must pay a portion of the \$255.00 fee as an initial partial filing fee. The initial partial filing fee is 20 percent of the greater of: (a) the average monthly deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the notice of appeal. 28 U.S.C. § 1915(b)(1); *McGore v. Wrigglesworth*, 114 F.3d 610, 611 (6th Cir. 1997). According to the certified copy of Plaintiff's prison trust account statement, Plaintiff had an average monthly deposit of \$160.11 over the past six months. Twenty percent of Plaintiff's average monthly deposits is \$32.02. Plaintiff shall remit \$32.02 within 30 days of the date of this Order to the address listed at the end of this Order. The check or other form of payment shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made.

After Plaintiff has paid the initial partial filing fee of \$32.02, Plaintiff must also pay the remaining amount of the filing fee through monthly payments of 20 percent of the preceding month's income credited to Plaintiff's prison trust fund account. 28 U.S.C. § 1915(b)(2). These payments will be forwarded by the agency having custody of the prisoner to the Clerk of this Court each time the amount in Plaintiff's trust account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2); *Hampton v. Hobbs*, 106 F.3d 1281, 1284 (6th Cir. 1997). The check or money order shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made. If the amount in Plaintiff's account is \$10.00 or less, no payment is required for that month. *Hampton*, 106 F.3d at 1284-85.

¹As of April 9, 2006, the filing fee for filing a civil appeal increased to \$455.00.

Therefore:

IT IS HEREBY ORDERED that the Court's Order denying Plaintiff leave to proceed *in forma pauperis* (Dkt. No. 13) is **VACATED**.

IT IS FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is **GRANTED** and within **30 days** hereof Plaintiff shall pay an initial partial filing fee of \$32.02 to the Clerk of this Court. **Plaintiff's failure to comply with this order may result in dismissal of this appeal without prejudice; however, such a dismissal will not negate Plaintiff's responsibility to pay the fee.**

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect the remainder of the filing fee. As outlined above, each month that the amount in Plaintiff's account exceeds \$10.00, the agency shall collect 20 percent of the preceding month's income and remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from Plaintiff's prisoner account until the entire remaining filing fee is paid.

A copy of this Order shall be certified by the Clerk to the Court of Appeals. FED. R. APP. P. 3(d).

DATED in Kalamazoo, MI:
June 5, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE

SEND REMITTANCES TO THE FOLLOWING ADDRESS:

Clerk, U.S. District Court
399 Federal Building
110 Michigan Street, NW
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."